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In the Supreme Court of the United States

OCTOBER TERM, 1936

Nos. 420–421

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRUEHAUF TRAILER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Sixth Circuit (R. 520–522) is reported in 85 F. (2d) 391. The findings of fact and order of the National Labor Relations Board (R. 45–59) are reported in 1 N. L. R. B. 68 (1936).

JURISDICTION

The decrees of the United States Circuit Court of Appeals for the Sixth Circuit were entered June 30, 1936 (R. 520). The petition for writs of certiorari was filed September 30, 1936, and was

granted November 9, 1936. Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) and 10 (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Act, as here applied to this respondent, is a valid exercise by Congress of its power to regulate commerce with foreign nations and among the several States.

2. Whether the provisions of subdivisions (1) and (3) of Section 8 of the act, as applied to this respondent, are consistent with the Fifth Amendment.

3. Whether respondent may raise any question as to the validity of provisions or applications of the Act other than those here invoked against it, and, if so, whether the validity of such other provisions and applications is in issue here because of their separability.

STATUTE INVOLVED

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. I, Title 29, Sec. 151 *et seq.*) is printed as an Appendix to the brief in No. 365, *The Associated Press* v. *National Labor Relations Board,* and is also summarized in that brief at pp. 3–8.

STATEMENT

On October 4, 193 . and October 17, 1935, written charges against the Fruehauf Trailer Company, re-

spondent here, were filed with the Regional Director for the Seventh Region of the National Labor Relations Board, pursuant to Section 10 (b) of the Act and to Article II, Section 2, of the Board's Rules and Regulations. The charges alleged that respondent had engaged in, and was continuing to engage in, certain unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (3) and (4) of the Act. The charges were filed by United Automobile Workers Federal Labor Union No. 19375 and by certain of respondent's employees. (R. 4–9.)

On October 23, 1935, and October 29, 1935, the Regional Director for the Seventh Region issued complaints on the respective charges pursuant to Section 10 (b) of the Act and Article II, Section 5 of the Regulations. These complaints alleged unfair labor practices as to subsections (1) and (3) of Section 8, and fixed November 6, 1935, for a hearing upon these charges before a trial examiner. (R. 9–20.) Copies of the complaints were served on respondent on the same day upon which they were issued (R. 16, 20). On October 29, 1935, the Board ordered that the two complaints and proceedings thus instituted by the Regional Director be consolidated and heard by the Board itself, or one or more of its members, at the time and place previously fixed (R. 22–23).

On October 31, 1935, and November 5, 1935, respondent, appearing specially, filed motions to dismiss the respective complaints on the ground that

the National Labor Relations Board had no jurisdiction over it, and also on the ground that the National Labor Relations Act, as applied to it by the Board, contravened Article I, Section 1 of the Constitution and the First, Fifth, Seventh, and Tenth Amendments (R. 23–29). The motion to dismiss the first complaint, which had been filed on October 31, 1935, was overruled by the Board on November 4, 1935 (R. 28). On November 5, 1935, and November 7, 1935, respondent answered the two complaints, reserving and renewing in its answers its motions to dismiss (R. 29–39).

The hearing on the consolidated complaint was held on November 6, 7 and 8, 1935, before the full membership of the Board. Following the introduction of evidence on the jurisdictional issues raised by the motions to dismiss, the Board reaffirmed its overruling of the motion to dismiss the first complaint, and overruled the motion to dismiss the second complaint (R. 200).

On December 12, 1935, the Board issued its decision setting forth its findings of fact (R. 45–58), and entered the order which is here being reviewed (R. 58–59). These findings, with references to the evidence on which they are based, may be summarized as follows:

1. *The nature of respondent's business.*—Respondent is a Michigan corporation engaged in the manufacture, sale, assembly and distribution of commercial trailers and trailer parts and acces-

sories. Its plant and principal office are located in Detroit, Michigan, but it maintains 31 branch sales offices in 12 different States and has distributors and dealers in the principal cities of the United States. Respondent also maintains and operates a wholly-owned subsidiary in Toronto, Canada, where sales are made and where considerable assembly work is done with materials obtained partly from the Detroit plant and partly from Canada. (R. 46; 90.) Respondent is the largest concern of its kind in the United States, its daily production amounting to about 30 chassis, and its gross sales in 1934 amounting to $3,318,000. Its nearest competitor in that year sold only 37 per cent of that amount. (R. 46–47; 111.)

More than 50 percent by value of the materials from which respondent's trailers are built comes from States other than Michigan. A substantial part of the materials acquired from without the State (for example, brakes, tires, wheels, rims, bearings, tools, and spacer bands) is received in finished form. (R. 46–48; 72–73.) Some of the materials coming from other States is in unfinished form and further work is done on it in the Detroit plant before it is used in the trailers (R. 47; 73).

More than 80 per cent of the respondent's sales are of products shipped outside Michigan to other States and foreign countries. In the first ten months of 1935 such sales amounted to 112 carloads of products in addition to 400 or 500 trailers

and accessories which were hauled over the highways by trucks or tractors to points outside the State. These sales are accomplished through respondent's branch sales offices and dealers, and, in Canada, through its Canadian subsidiary. Except where a sale is made from branch office stocks for cash, all sales are subject to the approval of the Detroit office. Where sales are made for installment payments, the credit of the dealer or distributor is subject to the approval of the Detroit office. All notes or mortgages are made payable to the Fruehauf Trailer Sales Company, a wholly-owned subsidiary. (R. 46–47; 129.) It is the practice of the respondent to "consign" trailers and parts to distributors in various States and to retain title until payment is made (R. 47; 125).

In connection with its interstate sales respondent furnishes service both in the determination of customer's needs and in making mechanical repairs and adjustments (R. 47; 81). Many of its branch sales offices maintain a supply of parts which are shipped to them from the plant in Detroit (R. 48, 86). Mechanics employed by respondent are permanently stationed at many branch offices and traveling mechanics supervise their work. A substantial part of this work consists of changes in construction, weight and design. (R. 48; 461–462.) but the mechanics also install the necessary couplings, or "fifth wheels", on customers' trucks or tractors (R. 48; 86). Many of the trailers shipped to other States or foreign countries are disassem-

bled by respondent's shipping department before shipment and are then assembled again near the point of destination (R. 48–49; 98).

Respondent's aim is to maintain a steady flow of materials into and through its Detroit plant, and a steady flow of completed trailers out to its purchasers (R. 143, 147, 153, 220). It maintains for this purpose a planning division employing about twenty or thirty men, who lay out schedules for all operations (R. 48–49, 75, 145 *et seq.*). So closely are the various operations synchronized that on occasion work or shipment is delayed until required parts arrive to complete the assembly (R. 49).

2. *The unfair labor practices.*—The United Automobile Workers Federal Labor Union No. 19375, a labor organization within the meaning of Section 2 (5) of the Act, had been organized among the production and maintenance employees of the respondent's Detroit plant (R. 50; 418–420, 483). Early in 1934, respondent, through a detective agency, hired a detective named Martin. Respondent's vice-president testified that Martin was "a personnel man as we considered him", but there is no doubt that it was Martin's duty, as respondent's vice-president himself admitted, "to ferret out the union activities of the men", and to keep the respondent "informed of what was going on." (R. 50; 215–224, 301–304).

For purposes of deception, and in order to make him eligible for membership in the Union, respond-

ent gave Martin employment in the plant (R. 50; 215–216, 403). He thereafter joined the Union and eventually became its treasurer (R. 50; 328, 394). He was thus able to procure a list of all the members of the Union (R. 50; 395). He made reports more than once a week to respondent, and the lists of members which he furnished were given to respondent's superintendent (R. 50; 216, 224–5, 227–229, 232, 301, 304). With these lists in his hand, the superintendent went about the factory from time to time and warned various employees against union activities, and on July 8, 1935, threatened several with discharge (R. 54; 338, 365).

In October 1934 the superintendent sent for Peterson, a subforeman. After complimenting Peterson on his record, the superintendent attempted to persuade him to give up his membership in the Union and promised Peterson that the company would take care of him if he would see to it that the Union did not gain strength in the plant. In November of the same year, the superintendent again offered Peterson a better job upon the same conditions, and on this occasion also stated that the company would not tolerate the Union. (R. 54; 475.) Peterson, who interviewed applicants for work, was also instructed by his foreman to learn from them whether they belonged to a union or believed in unionism, and was told that if they did, they would be objectionable (R. 51; 478–479).

Completely armed by Martin with the necessary information, respondent determined to put a stop to all attempts on the part of its factory workers to form an efficient independent bargaining agency, and in furtherance of that purpose summarily discharged between July 2 and October 10, 1935, nine men, including all the officers of the union except Martin, the detective (R. 51, 54; 328). Two of these men, Stephen Spryter and Arthur Hillman, president and vice-president of the Union, respectively, were discharged before the effective date of the National Labor Relations Act (R. 51, 54; 393, 410). With respect to the remaining seven employees, the discharge in each instance was summary, taking place during the day and after the men had commenced work (R. 51; 308, 319, 325, 354, 375, 454, 480). In several instances, respondent's officials made clear to these employees on or about the time of their discharge that they were being discriminated against because of their union activity; for example, "You see you must stick with the company and not with the union" (R. 51; 309); "I warned you a year ago about this union business" (R. 53; 378). In other instances, the discriminatory character of the discharge was clearly manifested from the surrounding circumstances.[1] The employees discharged were engaged

[1] William Weinmann (R. 52; 319); Arthur Beck (R. 52; 325–327); Leonard Chaloux (R. 52; 354); J. L. Peterson (R. 53–54; 472–480); Wollery Coonrod (R. 53; 454–458).

in the production, assembly, or disassembly operations in the plant (R. 51–54).[2]

3. *Effect of the unfair labor practices.*—The results of these discharges and threats was resentment, unrest, bitterness, and confusion among the employees of the Detroit plant (R. 55; 340). After five of the men had been discharged, a special meeting of the union was called and a strike vote taken to compel the reinstatement of the discharged men, but fell short of the necessary two-thirds concurrence required by the Union's rules (R. 55; 476). The discharges also cowed and restrained respondent's employees from any attempt to bargain collectively (R. 55; 429).

Upon the basis of these findings, the Board concluded that respondent, by the foregoing discharges and threats of discharges and by the employment of a detective for purposes of espionage within the Union, had engaged in unfair labor practices within the meaning of subsection (1) and (3) of Section 8 of the Act (R. 58). By reason of the nature of respondent's operations, the Board also concluded that respondent's activities were unfair labor practices affecting commerce within the meaning of subsections (6) and (7) of Section 2 of the Act, in that they tended to lead to

[2] Finding 30, R. 52, erroneously states that Arthur Beck, one of the discharged employees, was employed in the shipping department. Apparently the Board had confused Beck's prior employment by respondent (R. 324–325) with the position from which he was discharged (R. 325, 330).

labor disputes burdening and obstructing commerce and the free flow thereof (R. 58).

The Board therefore issued an order (R. 58–59) requiring respondent to cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights to self-organization and otherwise as guaranteed in Section 7 of the Act, and from discouraging membership in the Union or any other labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; to reinstate, with back pay, the 7 men discharged in the commission of the unfair labor practices; and to post appropriate notices. The complaint was dismissed with respect to the two employees who were discharged prior to the effective date of the Act (R. 59).

On December 17, 1935, respondent filed with the court below its petition to review and set aside the order of the Board, and on December 23, 1935, it filed an amendment supplementing its petition (R. 492–506). On February 2, 1936, the Board filed a return to the petition, praying that it be dismissed (R. 506–510). On December 19, 1935, the Board petitioned the court below for the enforcement of its order (R. 511–513). On March 17, 1936, the company filed an answer and return, praying that the petition of the Board be dismissed (R. 514–519). The proceedings were consolidated, and on June 30, 1936, the court entered its decrees holding

that the petition of the Board be dismissed and that the Board's order be set aside (R. 520–522).

ARGUMENT

We have shown in the brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* that the provisions of the National Labor Relations Act there, and here, involved are a valid exercise of the power of Congress to protect interstate commerce from burdens and injuries, and that they were properly applied, in that case, to an employer engaged in interstate commerce, with respect to his employees who were in, or intimately associated with, that commerce. We have also shown, in that brief, that the provisions of the Act there, and here, involved, do not conflict with the Fifth, Seventh, or First Amendments. Finally, we have shown in that brief that the provisions of the Act involved in the present case are separable from other provisions which have not been invoked against respondent, particularly Sections 8 (5) and 9. Accordingly, we respectfully refer the Court to the brief in that case for the discussion of those questions.

Moreover, in the brief for the Board in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* we have set out in detail the power of Congress to control, and consequently to prevent through this Act, industrial strife in the producing or manufacturing divisions of an enterprise largely engaged in and dependent upon the

free flow of interstate commerce. Rather than repeat the arguments there advanced, we shall only state briefly in the present brief the legal principles involved, and shall then indicate their application to this respondent, a large enterprise which occupies a predominant position in the manufacture and distribution in interstate commerce of automobile trailers.[3]

THE NATIONAL LABOR RELATIONS ACT, AS HERE APPLIED TO THIS RESPONDENT, IS A VALID EXERCISE OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE

The National Labor Relations Act is an exercise of the power of Congress to protect interstate commerce from injuries caused by industrial strife. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. Experience has shown this strife to be a burden upon commerce not only in its totality, but also because in many

[3] On the merits of the case, the Board made detailed findings (R. 50–57) with respect to the unfair labor practices engaged in by respondent and concluded that it had discharged seven employees under circumstances which constituted violations of Section 8, subsections (1) and (3) of the Act. Respondent offered no evidence in this regard at the hearings before the Board, although it participated in the hearing before the Board, although it participated in the Board's findings as to the facts, if supported by evidence, shall be conclusive (Section 10 (e)). The evidence clearly supports the findings (*supra*, pp. 7–10), and respondent is therefore not in a position to overthrow them. *Florida* v. *United States*, 292 U. S. 1, 12; *Federal Trade Commission* v. *Algoma Lumber Company*, 291 U. S. 67, 73.

individual instances strife eventuated in conspiracies to affect commerce, or otherwise imposed direct and substantial burdens upon it.

Congress, in dealing with the evil of industrial strife, might have approached the problem by a statute designed to remove the burden on interstate commerce after it had evidenced itself in a particular case, or it might have enacted a statute designed to eliminate the causes of the burdens in anticipation of their probable effect. The National Labor Relations Act follows the second alternative.

The Act does not, however, attempt to eliminate the causes of industrial strife in *all* enterprises. The statute is specifically directed to the elimination of the practices proscribed by Section 8 only when they are found to be "affecting commerce" (Sec. 10 (a)). The phrase "affecting commerce" is defined in Section 2 (7) as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce". These jurisdictional limitations, obviously patterned upon the decisions of this Court under the commerce clause, are manifestly a direction to the Board to exercise the national power within the limits permitted by the Constitution.

Thus the validity of any specific application of the preventive measures of this Act depends upon whether industrial strife resulting from the prac-

tices in the particular enterprise under consideration would be of the character which Federal power could control if it occurred. If strife in that enterprise could be controlled, certainly it may be prevented. *Stafford* v. *Wallace,* 258 U. S. 495, 525. In the Board's brief in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* at p. 39, we pointed out the three situations in which Congress may exercise its power to control burdens and obstructions on interstate commerce after they have arisen. We submit that in the application of the Act to respondent each of these three situations is presented. Of course, the existence of any one of the three situations is sufficient to sustain the jurisdiction of the Board.

I

It is well settled that an industrial dispute involving an intent to restrain commerce is within the control power of Congress, even though arising out of local activity. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association,* 274 U. S. 37; *Duplex Printing Co.* v. *Deering,* 254 U. S. 443; *Loewe* v. *Lawler,* 208 U. S. 274. Consequently, where the situation in a particular enterprise presents the likelihood that a labor dispute, if it occurred, would involve an intent to restrain commerce, then the Board can apply the preventive measures of this statute to that enterprise. It is

not claimed in the present case that there is any proof of the existence of an actual intent to affect commerce. However, there is much evidence that in this particular enterprise such a definite intent might reasonably be expected to arise.

Respondent is, as the statement shows (pp. 4–7, *supra*) a national enterprise, with a manufacturing plant in one State and a large number of branch sales offices, distributors, and dealers in many other States. In an enterprise of this type industrial strife in any division of the enterprise is apt to involve a purpose to promote collective action among employees in other divisions of the enterprise in order to increase the bargaining power of all the employees as against the common employer. *Cf. Loewe* v. *Lawler*, 208 U. S. 274; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37. Moreover, as the current automobile situation indicates, there is great likelihood of sympathetic action by the employees of the various branches of the industry even though not employed by the same companies, for the purpose of bringing pressure to bear on the industry as a whole.

We submit, therefore, that there is reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, involve an intent to affect commerce, and that the Board was justified in holding that the preventive measures of the

National Labor Relations Act should be invoked against respondent in order to anticipate that industrial strife which would be within the control power of Congress.

II

This Court has recognized that Congress may exercise control over some industrial disputes even where intent cannot be or is not proven. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 410–411; *Industrial Association* v. *United States*, 268 U. S. 64, 81; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457, 471. Cf. *United States* v. *Patten*, 226 U. S. 525. The opinions of the Court do not clearly define this category of industrial strife with the necessary effect of substantially burdening interstate commerce However, in the brief in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, at p. 51, we have suggested three possible constructions which might be adopted: (1) Industrial strife has the necessary effect of burdening or obstructing interstate commerce when it occurs in an enterprise lying within a well-defined "stream" or "flow" of commerce; (2) industrial strife is of that type when its effect would be to restrain a substantial proportion of all the commerce in the particular commodity; or (3) industrial strife is of that type when its effect would be to prevent interstate sales or shipments of a substantial volume of goods which would otherwise move in interstate commerce.

Although not so clearly within a stream or flow of commerce as respondent in No. 419, we believe that industrial strife in respondent's enterprise woud be within the control power of Congress even if necessary effect were limited to the first of these three constructions. If the second construction be adopted, clearly industrial strife in the respondent's enterprise would be included, and it is equally clear that it would be within the third construction.

Respondent's enterprise is the focal point for a stream or flow of interstate commerce. Over 50 percent by value of the raw, unfinished and other materials which are used by the respondent in the construction of trailers are shipped to it from other States (R. 72, 117). Steel in large quantities is brought from Illinois and Ohio (R. 113), axle forgings from Ohio (R. 114), brake equipment from Indiana and Ohio (R. 115–116) and lumber from the southern States (R. 116). Many of the parts used by respondent are acquired in finished form, such as rims, wheels, bearings, tires, springs and lights (R. 72–73, 116–117).

Nor does the interstate stream cease at respondent's plant. More than 80% of respondent's sales are to customers outside the State of Michigan (R. 153). The efficient operation of respondent's enterprise requires the maintenance of a steady flow of materials into and through its plant, and a steady stream of trailers out to its purchasers (R. 153). Indeed, respondent makes

every effort to maintain this flow. Raw and unfinished materials are secured as closely as possible to the time when they are needed in the active course of its operations (R. 143); materials are shipped to respondent according to a schedule laid out by it (R. 147). Occasionally work has to be held up for several days until materials are received (R. 134–135). Respondent maintains a planning department employing between twenty and thirty men who supervise the inventory and route the materials through the plant from the time they are received until they are turned over to the shipping department as finished trailers (R. 75, 145 *et seq.*)

Respondent's enterprise thus exhibits a large and constant movement of goods into the Detroit plant; the briefest possible pause there, in part for manufacture, and in part merely for the assembly of completed parts, and immediate shipment to all parts of the United States. We submit, therefore, that industrial strife in respondent's Detroit plant would have the necessary effect of burdening and obstructing interstate commerce within the first construction suggested above (p. 17, *supra*), and is therefore within the control power of Congress. *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420.

If the second suggested definition of industrial strife with the necessary effect of burdening and obstructing interstate commerce be

adopted—*i. e.*, strife which has the effect of preventing or disrupting a substantial proportion of all the interstate commerce in a particular commodity, it is clear that strife in respondent's plant would be included within the control power of Congress. Respondent is the largest concern of its kind in the United States. Its gross sales in 1934 amounted to $3,818,000 (R. 123), and its largest competitor in that year sold only 37 percent of that amount (R. 111). In 1935 the value of respondent's product was approximately 20–25 percent of the total for the industry. See U. S. Bureau of Census, *Census of Manufactures* (1935), Nos. 1407–1408, p. 8. It is apparent that industrial strife in respondent's plant would immediately curtail the movement from and into the channels of commerce not only of a substantial volume of goods, but also of a substantial part of the interstate commerce in the trailer industry as a whole. Consequently, we submit that there is a reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, have the necessary effect of substantially burdening interstate commerce. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Industrial Association* v. *United States*, 268 U. S. 64; *International Organization* v. *Red Jacket C. C. & C. Co.*, 18 F. (2d) 839 (C. C. A. 4th), certiorari denied, 275 U. S. 536. Cf. *United States* v. *Reading Co.*, 226 U. S. 324, 370. Accordingly, either under definition (1) or definition (2), *supra*, p. 17, the Board was justified in holding that the

preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife burdening commerce which would be within the control power of Congress.

III

There remains one further ground upon which the order of the Board in the present case may be supported. This Court has on many occasions enunciated the principle that where Congress, after investigation, directs its legislation to the prevention of certain activities, even though usually only of local concern, which recur with such frequency as to constitute an undue burden on commerce, those activities may be subjected to the control power of Congress. *Stafford* v. *Wallace*, 258 U. S. 495, 520–521; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 40; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457, 469. See also *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

We have already described, in the briefs for the Board in Nos. 365 and 419, the recurring and widespread character of the burden on interstate commerce resulting from industrial strife in enterprises which receive a substantial part of their materials from, and send a substantial amount of their products in interstate commerce. We have also described the close and substantial relationship which industrial strife in such enterprises bears

to interstate commerce, the efforts of the Federal Government, by various devices, to mitigate it, and the studies made over a long period of years which eventuated in this Act, the basic principles of which have already been sustained by this Court in their application to the prevention of industrial disputes affecting the railroads. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

If, as we contend, the control power of Congress extends to recurrent industrial strife in these interstate enterprises, there can be no doubt that the order of the Board in the present case was within its jurisdiction. Respondent is dependent for over 50 percent of its materials upon the products of States other than Michigan (R. 72, 117). Further, over 80 percent of its finished trailers are sold to customers outside of that State (R. 153, 162, 165). It maintains 31 branch sales offices in 12 other States and a wholly owned subsidiary in Canada (R. 91), and has distributors and dealers in the principal cities of the United States (R. 81). We submit, therefore, that industrial strife in respondent's enterprise is of the character which, by its recurrence, comes within the control of Congress under the principle stated above. Consequently, the Board was justified in holding that the preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife burdening com-

merce which would be within the control power of Congress.

CONCLUSION

Wherefore, the judgment of the court below should be reversed, and the cause remanded with instructions to grant the petition of the Board for the enforcement of its order and to dismiss the petition of respondent.

Respectfully submitted,

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